

The 27th April, 1985

No. 9/5/84-6Lab./3281.—In pursuance of provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Dalmia Cement Bharat Ltd., 23 Mile Stone, Mathura Road, Ballabgarh

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 228/1981.

Between

SHRI SUKH RAM WORKMAN AND THE MANAGEMENT OF M/S DALMIA CEMENT BHARAT LTD.,  
23 MILE STONE, MATHURA ROAD, BALLABGARH.

Present :—

Shri R.P. Singh for the workman.

Shri C.M. Lal for the Management.

### AWARD

In exercise of powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sukh Ram Workman and the management of M/s Dalmia Cement Bharat Ltd., 23 Mile Stone, Mathura Road, Ballabgarh, to this Tribunal for adjudication :—

Whether the termination of services of Shri Sukh Ram was justified and order ? If so, to what relief is he entitled ?

2. Notices were issued to both the parties. In the claim statement filed on 23rd November, 1981, it was alleged that the claimant was employed by the respondent, but terminated the services without any prior notice and no chargesheet was served nor any enquiry was held against the claimant. It was then alleged that the services of the claimant were terminated illegally and as such he was entitled to reinstatement with full back wages.

3. The written statement was filed on 7th December, 1981, while the amended written statement on 27th May, 1982. It was pleaded that there was no relationship of employer and employee between the parties. It was then pleaded that the management did not terminate the services of the claimant, whose name was removed from the roll by the earlier management of M/s. Telesound India Limited in accordance with the Certified Standing Orders applicable to the establishment on account of his continued and unauthorised absence for more than 8 days. It was further pleaded that as per the Scheme of Amalgamation of M/s. Telesound India Ltd., with M/s Dalmia Cement (Bharat) Limited as sanctioned by the Hon'ble Delhi High Court, no liability had been placed on the respondent Management vis-a-vis, the employee of M/s. Telesound India Ltd., who was not the employee of the said company on the date on which the order of the Hon'ble Court sanctioning the scheme was passed on 5th November, 1980/5th December, 1980 and that the claimant not in employment of M/s. Telesound India Ltd., on that date. It was then pleaded that in any case the claim made by the claimant after lapse of about 8 years was highly belated and not maintainable. It was further pleaded that the claimant remained absent from duty in an unauthorised manner from 22nd August, 1973 and as such was deemed to have lost his lien on the job as per clause 16 of the Standing orders applicable to the employees of the Establishment and his name was, therefore, removed from the roll of the establishment as per the management letter dated 1st September, 1973. It was further pleaded that the claimant had stolen some property of the said Management and was challaned by the Government which was gross mis-conduct warranting termination of his services.

4. The claimant in his rejoinder dated 28th November, 1981, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 7th July, 1982 :—

- (1) Whether there was a relationship of employee and employer between the parties OPW.
- (2) Whether the Management was liable for the claim of the workman in view of the order of the Hon'ble Delhi High Court ? OPW.
- (3) Whether the claim was belated and if so, to what effect ? OPM
- (4) Whether the termination of service of Shri Sukh Ram was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined two witnesses and documents Ex. M-1 to M-5 have been tendered into evidence. The claimant has examined two witnesses and documents Ex. W-1 to W-2, have been tendered into evidence. After going through the entire evidence and hearing both the representatives of the parties, my findings on the above issues are as under:—

**Issue No. 1.**

7. MW-1 Shri Vikram Hoon, Personnel Officer of the respondent stated that the claimant was not employed by their company but he was employed by Erstwhile Telefunken which was later on named and styled as Telesound India Limited, Ballabgarh. He further stated that M/s Telesound India Ltd., was closed in the year 1977 when winding up proceedings of the said company were initiated in the Hon'ble Delhi High Court, but subsequently, in December, 1980, under the Amalgamation Scheme, Telesound India Ltd., was amalgamated with the present Company viz. Dalmia Cement Bharat Ltd., Ballabgarh. He further stated that the services of the claimant were not terminated by the present company, but Erstwhile Telesound India Ltd., Ballabgarh had terminated his services on 1st September, 1973,—vide Ex. M-1 which was sent by registered post but was received back as undelivered with the report that the addressee had refused to receive the same—vide registered cover Ex. M-3. He further stated that the document Ex. M-4 contained the certified Standing Orders of M/s Telefunken India Ltd. which applied to M/s Telesound India Ltd. He then stated that the present company was liable for 134 Employees whose list was given by the Erstwhile Company and were on the rolls at the time of amalgamation and further that the claimant was not on the roll of M/s Telesound India Limited, Ballabgarh on the date of amalgamation. Ex. M-5 is the list of 137 employees. MW-2 Shri Deputy Dutt Sharma stated that previously he used to work in Telesound India Ltd. Ballabgarh, which was closed, while the Dalmia Cement Bharat Limited came into existence on 23rd December, 1980 and took over M/s Telesound India Ltd., by the order of the Hon'ble Delhi High Court as per the scheme of amalgamation. He further stated that the claimant was the Security Guard in M/s Telesound India Limited and he remained absent for a number of days and his name was struck off on account of absence according to the standing orders Ex. M-4 and the letter Ex. M-1 was issued by Shri A. S. Sethi Personnel Officer. He further stated that M/s Telesound India Ltd., Ballabgarh had given the list of its employees, Hon'ble Delhi High, copy of which was Ex. M-5 and that M/s Dalmia Cement Bharat Limited had not terminated the service of the claimant and that the claimant was not in service when the present company started functioning.

7. The claimant has examined WW-1 Shri Shyam Lal who stated that he also worked as Security Guard in M/s Telefunken Limited. He then stated that the company wanted to terminate the services of the Security Guards on the plea that they wanted to engage the Security Guards on contract basis. He further stated that on 22nd August, 1973, he came for duty when the claimant was arrested by the Police at about 7-30 p.m. He further stated that keeping in view the situation prevailing in that factory he resigned from his job. WW-2 is the claimant who stated that he was employed as Chowkidar on 17th February, 1970, and drawing Rs. 175 per month. He further stated that he was arrested on 22nd August, 1973 from the factory on the basis of first information report lodged by the management and he remained in police/judicial custody for 12/13 days. He further stated that after being released on bail he went to the factory to join duty, but he was not allowed to do so by Shri R.K. Bhatia, Chief Security Officer who told him that the matter would be considered after the criminal case had been decided. He then stated that the challan was filed against him but he was acquitted in the criminal case,—vide copy of the judgement Ex. W-2 (dated 4th December 1978) when he went to factory and the watchman asked him to go to Delhi Head Office and he met Shri V. K. Gupta of the respondent company who told him that the claimant would be taken back on duty after one or two months when the factory started working as it was lying closed at that time. He further stated that he was not told regarding any amalgamation scheme, and that no letter was received from the respondent when he was in the police custody and that the management had knowledge regarding criminal procedure which were pending in the Judicial Court. He further stated that no letter was sent by the Management after his acquittal. He further stated that he was not paid any compensation. Ex. W-1 is the copy of the appointment letter of the claimant.

8. A perusal of the above evidence would show that MW-1 Shri Vikram Hoon and MW-2 Shri Deputy Dutt Sharma have deposed that the claimant was employed by M/s Telefunken Ltd., which was later on known as M/s Telesound India Ltd. and that the services of the claimant were terminated on 1st September, 1973 for his continued absence from duty for 8 days. They further deposed that M/s Telesound India Ltd. was closed in 1977. Their testimony is also to the effect that winding up proceedings of M/s Telesound India Ltd., took place but ultimately Telesound India Ltd., was amalgamated with M/s Dalmia Cement Bharat Limited as per the scheme of amalgamation on 23rd December, 1980 and since the claimant was not on the roll of M/s Telesound India Ltd. on 23rd December, 1980, therefore, there was no relationship of employer and employee between the parties in-as-much-as his name did not appear in the list of employees Ex. M-5 which was prepared at the time of amalgamation. The testimony of WW-1 Shri Shyam Lal and WW-2 Shri Sukh Ram claimant is to the effect that the claimant was arrested by the Police on 22nd August, 1973 when he was on duty because the first information report regarding theft was lodged against him by M/s Telesound India Ltd. and that the claimant remained in Police/judicial custody for 12/13 days and that no letter was received by the claimant when he was in Police/judicial custody. Their evidence is to the effect that after being released on bail the claimant was asked to wait till the decision of the criminal case and that the claimant was acquitted on 4th December, 1978 in that case when he came to the factory which was lying closed and that the claimant was asked to wait by

Shri V. K. Gupta of Telesound India Ltd. for some time because the factory was lying closed and further that the claimant was not told regarding amalgamation scheme. The argument of the representative of the management is that according to para 12 of the scheme of amalgamation, all the employees of M/s Telesound India Ltd. on the date on which the order of the Hon'ble Court sanctioning the scheme was passed would become the employees of M/s Dalmia Cement Bharat Ltd., Ballabgarh without any break or interruption in services and on terms and conditions not less favourable to them. It was further argued that in the list Ex. M-5 which was prepared at the time, the name of the claimant did not appear and as such there was no relationship of employer and employee between the parties. The argument of the representative of the claimant, on the other hand, is that the order terminating the service of the claimant was illegal and if the said order was set aside, the claimant would be deemed to be in service of M/s Telesound India Ltd., Ballabgarh with effect from 1st September, 1973 and since M/s Telesound India Ltd. Ballabgarh was amalgamated with M/s Dalmia Cement Bharat on 23rd December, 1980 therefore, the claimant become the employee of M/s Dalmia Cement Bharat Limited, Ballabgarh.

9. From the above evidence, it is clear that the claimant was got arrested by M/s Telesound India Ltd. on 22nd August, 1973 and he remained in Police/judicial custody for 12/13 days. If the impugned order dated 1st September, 1973 is found to be unjustified nor in order, the claimant is entitled to be reinstated which would take effect from 1st September, 1973 when M/s Telesound India Ltd., was closed in 1977 and winding up proceedings took place and ultimately this company was amalgamated with M/s Dalmia Cement Bharat Ltd. on 23rd December, 1980. The name of the claimant is not mentioned in the list Ex. M-1 but he would be, deemed to be in service with effect from 1st September, 1973 if the termination order is set aside and consequently in that event he would be on the roll of M/s Telesound India Ltd. on 23d December, 1980 when the amalgamation took place. In this situation the clause 12 of the Amalgamation Scheme helps the claimant. It is thus held that there was relationship of employer and employees between the parties if the termination of service of the claimant is found to be unjustified nor in order. The issue is decided accordingly in favour of the claimant.

#### Issue No. 2

10. In view of the above discussion of Issue No.1, it is held that the respondent-management is liable to take back the claimant on duty if the termination order is found to be unjustified not in order. The issue is decided accordingly in favour of the workman.

#### Issue No. 3 :

11. The claimant was arrested on 22nd August, 1973 and he remained in Police/judicial custody for 12/13 days i.e. upto 3rd September, 1973, but his service was terminated on 1st September, 1973. If he was not being allowed to join duty, he must have filed a complaint in writing but he depended on the alleged oral assurance of Shri R.K. Bhatia Chief Security Officer that his case would be considered when the criminal case decided. The said case was decided on 4th December, 1978. He filed the demand notice on 27th April, 1981 and prior to that M/s Telesound India Ltd., was amalgamated with M/s Dalmia Cement Bharat Ltd., on 28th December, 1980. The claimant should have taken up the matter in writing and should not have depended on oral promise for such a long period from 3rd September, 1973 to 27th April, 1981. For this delay on his part, the respondent-management cannot be burdened with back wages. The issue is decided accordingly in favour of the management.

#### Issue No. 4 :

12. The evidence of both the parties has been referred to in detail in issue No. 1. The claimant was got arrested by M/s Telesound Indian Ltd., on 22nd August, 1973, in criminal case and he remained in Police/judicial custody for 12/13 days, i.e. upto 3rd September, 1973 but prior to his release, his services were terminated on 1st September, 1973, on the ground of his continued absence from duty for 8 days. The Management of M/s Telesound India Ltd., knew that the claimant was in Police/judicial custody because the arrest was made by the police at the instance of M/s Telesound India Ltd. As such the management should have waited till the claimant was released on bail. The management terminated the service—vide letter Ex. M-1 under clause 16 of the certified Standing Orders copy Ex. M-4 which clause relates to leave and not regarding the absence on account of arrest or otherwise for any reasons for more than one week. Consequently, the order terminating the service under clause 16 is not a valid order. Further, the claimant joined service on 17th February, 1970 and if his services were being terminated on 1st September, 1973, he should have been given compensation etc. under the provisions of Section 25-F of the Industrial Disputes Act, 1947. In the letter Ex. M-1, there is no mention regarding the payment of compensation etc. In the rulings reported as Naresh Chandra Das and Seventh Industrial Tribunal and others, 1982-II-LLJ-64, Mohan Lal and Bharat Electronics Ltd., 1981 II-LLJ-70 it is laid down that where the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not complied with, that termination was illegal. In the ruling reported as Pepsu Road Transport Corporation, Patiala Vs Presiding Officer, Labour Court, Patiala, 1981-II-S.L.R. 445, it is laid down that loss of lien in terms of Standing order 17(4) of the Industrial Employment (Standing Orders) Punjab Rules, 1949, amounts to retrenchment and that the provisions of Section 25-F of the Industrial Disputes Act, 1947, were attracted. Consequently, the impugned order dated 1st September, 1973, was illegal in-as-much-as the provisions of Section 25-F of the Industrial Disputes Act, 1947, were not complied with.

13. The representative of the management placed reliance on the ruling reported as **Burn & Co. Ltd., and their employees, 1957-I-LLJ-Page 226**. In that case, the workman was arrested by the Government under West Bengal Security Act, and detained in Jail from 25th January, 1949 to 5th April, 1951. This ruling is distinguishable on facts because the arrest in that case was not got made by the Company, but on the other hand, the workman was arrested under the provisions of West Bengal Security Act. The second ruling is **M/s Freewheels India Ltd., Faridabad, Petitioner V. State of Haryana and others, 1984-Lab. I.C. NOC. 82 (Punj. & Har.)-40**, in which it is laid down that where the workman has been absenting from services for 8 consecutive days, the termination of his service was justified. This ruling does not help the management because the provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with in the present case. The 3rd ruling is **K.N. Vellayan and Government of Tamil Nadu and another, 1979-II-LLJ-186**, in which, it is laid down that where the workman lost lien of employment for continued absence of more than eight consecutive days in terms of the standing Orders, it amounted to automatic termination of employment. This ruling is also of no help to the respondent because the provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with. Likewise, the rulings reported as **Vellayan (K.N.) and others and Government of Tamil Nadu another, 1979-I-LLN-610** and **Buckingham and Carnatic Company Ltd., and Venkatayya and another, 1963-II-LLJ page 638**, do not help the respondent as the services have been terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The ruling reported as **Shaw Wallace and Co. Ltd. and workman, 1978-I-LLJ-482** is distinguishable on facts because in that case it was held that the question of claim between the appellant and the Court receiver cannot be gone into appeal because Court receiver was not a party in those proceedings, but the disputes arose between the appellant and its workman. In the present case, the respondent is bound to take back the claimant in service because his services were terminated in an illegal manner and **M/s Telesound India Ltd.,** has been amalgamated with the respondent. Company.

13. In view of the above discussion it is held that the termination of services of the claimant was neither justified nor in order and as such he is entitled to reinstatement, but would not get back wages from the respondent for the detailed reasons given in issue No. 3 above. The award is passed accordingly.

R. N. BATRA,

Dated 12th April, 1985.

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endrst No. 316, dated 15th April, 1985.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

KULWANT SINGH,  
Secretary to Government, Haryana,  
Labour and Employment Department.

दिनांक 3 जून 1985

सं० ओ०वि०/फरीदाबाद/192-83/23931.-चूंकि हरियाणा के राज्यपाल को राय है कि मै० लेड राईट इन्डस्ट्रीज लि०, प्लॉट नं. 67, सेक्टर-6, फरीदाबाद, के अधिकारी श्री सुधोर प्रसाद तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई औद्योगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निदिष्ट करना वांछनीय समझते हैं ;

इसलिये, अब, औद्योगिक विवाद अधिनियम, 1947, को धारा 10 को उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-अम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-अम-88-अम/57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित अम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय के लिये निदिष्ट करते हैं, जो कि उक्त प्रबन्धकों तथा अधिकारियों के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है:—

क्या श्री सुधोर प्रसाद की सेवाओं का समापन न्यायोचित तथा ठीक है ? यदि नहीं, तो वह किस राहत का हकदार है ?